

Evan S. Strassberg (8279)
VANTUS LAW GROUP, P.C.
6995 Union Park Center, Suite 100
Salt Lake City, Utah 84047
Telephone: (801) 833-0500
Facsimile: (801) 931-2300

*Attorneys for Best Vinyl, LLC, Vanguard Vinyl, Inc., Vance Barrett,
Melanie Barrett, Scott Petersen and Marilyn Petersen*

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION**

BEST VINYL, LLC, ET AL.

Plaintiffs,

v.

HOMELAND VINYL PRODUCTS, INC., ET AL.,

Defendants.

**MEMORANDUM DECISION AND
ORDER GRANTING**

**(1) THE INDIVIDUALS' MOTION TO
DISMISS THE SIXTH CAUSE OF
ACTION (UNJUST ENRICHMENT) IN
MARWIT'S CROSS-CLAIM; AND
(2) THE INDIVIDUALS' MOTION FOR
SUMMARY JUDGMENT ON THE
SIXTH CAUSE OF ACTION IN
MARWIT'S CROSS-CLAIM**

Consolidated Case No. 2:10-cv-01158 DN
District Judge David Nuffer

Vance Barrett, Melanie Barrett, Scott Petersen and Marilyn Petersen (collectively, the “Individuals”) filed (1) a motion to dismiss the cross-claim for unjust enrichment asserted against them by Marwit Capital Partners II, L.P. (“Marwit”), and (2) a motion for summary judgment on that same claim. Those motions came before the Court on Thursday, October 25, 2012 at 8:30 am. Evan S. Strassberg and Michael Barnhill of Vantus Law Group appeared at the hearing for the Individuals and Eric P. Francisconi appeared at the hearing for Marwit.

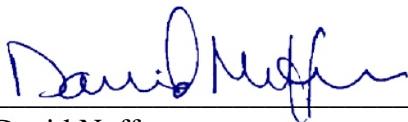
The Court considered the Individuals' moving papers, Marwit's response, and the Individuals' reply thereto, but did not take oral argument. Having considered the relevant pleadings and the arguments set forth in the parties' briefing, and for good cause appearing,

IT IS HEREBY ORDERED that the Individuals' Motion to Dismiss the Sixth Cause of Action (Unjust Enrichment) in Marwit's Cross-claim (docket no. 77) is GRANTED. The Court finds that the sale of the assets of Best Vinyl at auction discharges any subordinate security interest or other subordinate lien in accordance with the express provisions of the Uniform Commercial Code. Allowing an unjust enrichment claim against purchasers at foreclosure auctions would defeat the statutory scheme. Accordingly, the Sixth Cause of Action set forth in Marwit's First Amended Answer to Counterclaim and Cross-Claim for Unjust Enrichment is hereby DISMISSED WITH PREJUDICE as against the Individuals.

IT IS FURTHER ORDERED that the Individuals' Motion for Summary Judgment Against Marwit Capital Partners II, L.P. (docket no. 130) is GRANTED IN PART as to Marwit's unjust enrichment claim based upon a failure of proof. Specifically, although Marwit has alleged that the assets were acquired at the foreclosure sale for a price below their value, Marwit has no evidence of the value of the assets and by how much the price paid at the auction was deficient. Accordingly, summary judgment for the Individuals would be entirely appropriate even if the Court were not inclined to dismiss Marwit's unjust enrichment claim as a matter of law.

SIGNED this 15th day of November, 2012.

UNITED STATES DISTRICT COURT



David Nuffer
District Court Judge

Approved as to form & content:

BARNES, FITZGERALD, FRANCISCONI & ZEMAN LLP

By: /s/ Eric P. Francisconi (signed with permission)

Larry S. Zeman
Eric P. Francisconi
Attorneys for Marwit Capital Partners II, L.P.